

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

DEFENSE DISTRIBUTED and SECOND
AMENDMENT FOUNDATION, INC.,

Plaintiffs,

V.

UNITED STATES DEPARTMENT OF
STATE, Michael R. Pompeo, in his official
capacity as Secretary of State;
DIRECTORATE OF TRADE
CONTROLS; MIKE MILLER, in his
official capacity as Acting Deputy Assistant
Secretary of Defense Trade Controls;
SARAH HEIDEMA, in her official
capacity as Director of Policy, Office of
Defense Trade Controls Policy,

and

GURBIR GREWAL, Attorney General of
the State of New Jersey,

Defendants.

Case No.: 1:18-cv-637-RP

**FEDERAL DEFENDANTS' UNOPPOSED MOTION FOR
AN EXTENSION OF TIME TO FILE AN ANSWER**

Plaintiffs originally filed this case more than two years ago, on July 29, 2018. *See* Compl., Dkt. 1. On November 10, 2020, Plaintiffs filed an 89-page, 348-paragraph Second Amended Complaint, Dkt. 117 (“SAC”), for the first time naming officials and agencies of the federal government as Defendants.

Plaintiffs did not serve the SAC on the United States Attorney’s Office until November 30, 2020. Dkt. 125. In the interim, on November 18, 2020, Defendant Gurbir Grewal—the only defendant remaining of those originally named in this action—filed a Motion to Sever and to

Transfer Venue Pursuant to 28 U.S.C. §1404(a) and 28 U.S.C. § 1406(a). *See* Dkt. 121. In light of the motion to sever and transfer, this Court extended Grewal's time to respond to Plaintiffs' SAC to 30 days after this Court's ruling on the motion to transfer. *See* Text Order, November 25, 2020.

Under the Federal Rules, the Federal Defendants have 60 days, until January 29, 2021, to answer or to otherwise respond to the SAC. *See* Fed. R. Civ. P. 12(a)(2). Given the complexity of the issues presented by Plaintiffs' lengthy pleading and the intertwined relationship between the claims against the Federal Defendants and the claims against Grewal, the Federal Defendants respectfully request an extension of time to respond to the SAC until 60 days after this Court rules on the motion to sever and transfer.

Just last week, the Ninth Circuit heard oral arguments in *State of Wash., et al. v. Dep't of State, et al.*, 20-35391 (9th Cir. Jan. 11, 2020). In that case, the Ninth Circuit is considering the State Department's appeal of a preliminary injunction that prevents the transfer of regulatory authority over the technical data for 3-D printed guns from being transferred from the Department of State to the Department of Commerce. *Id.*; *see also* Dkt. 136 at 2 (referencing State's "plans to transfer regulatory authority over exports of the underlying firearms to the Department of Commerce"). It is possible that the Ninth Circuit may issue a ruling in that case which could insert new legal questions regarding Plaintiffs' claims against the State Department. Extending Federal Defendants' time to file a responsive pleading until 60 days after this Court's ruling on the motion to sever may thus serve a second purpose: it would allow additional time for the Ninth Circuit to issue a decision that may streamline or even resolve some of the legal issues that this Court would need to consider.

This motion is made in good faith and not for purposes of delay, and the parties do not oppose this request for an extension.

Dated: January 21, 2021

Respectfully submitted,

BRIAN M. BOYNTON
Acting Assistant Attorney General

ANTHONY J. COPPOLINO
Deputy Director

/s/ Lisa Newman
Lisa Newman (TX Bar No. 24107878)
Trial Attorney
United States Department of Justice
Civil Division, Federal Programs Branch
1100 L Street, N.W., Rm. #12016
Washington, DC 20005
Tel.: (202) 353-5882
lisa.n.newman@usdoj.gov

Gregg N. Sofer
United States Attorney

Liane Noble
Assistant United States Attorney
Texas Bar No. 24079059
903 San Jacinto Blvd., Suite 334
Austin, Texas 78701
Tel.: (512) 370-1252
liane.noble@usdoj.gov

Counsel for Defendants

CERTIFICATE OF CONFERENCE

I certify that counsel for the Federal Defendants conferred with Plaintiffs' and Defendant Gurbir Grewal's counsel by email to discuss this motion, and Plaintiffs and Defendant Grewal are unopposed to the relief requested herein.

/s/ Lisa Newman

Lisa Newman

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing document was served on the other parties to this action and their counsel of record through electronic filing in the Court's ECF system on January 21, 2021.

/s/ Lisa Newman
Lisa N. Newman